

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 27 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GREGORY DILLON,

Plaintiff - Appellant,

v.

THOMAS RIDGE, Secretary of Homeland
Security Department,

Defendant - Appellee.

No. 06-17297

D.C. No. CV-04-01502-MEJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Maria-Elena James, Magistrate Judge, Presiding

Argued and Submitted May 14, 2008
San Francisco, California

Before: O'SCANNLAIN and HAWKINS, Circuit Judges, and SELNA,^{**} District
Judge.

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The Honorable James V. Selna, United States District Judge for the
Central District of California, sitting by designation.

Gregory Dillon appeals the district court's orders granting the motions of Tom Ridge, the Secretary of Homeland Security, for summary judgment on Dillon's two claims of retaliation. The facts and prior proceedings are known to the parties and need not be repeated here.

To survive summary judgment on his claim of retaliatory termination, Dillon bears the burden of establishing that a triable issue exists concerning whether the Secretary's proffered explanation for his termination is "unworthy of credence," or that "a discriminatory reason more likely motivated [the Asylum Office]." *Snead v. Metro. Prop. & Cas. Ins. Co.*, 237 F.3d 1080, 1093-94 (9th Cir. 2001) (quoting *Tex. Dept. of Comty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981)). The Secretary explained that he terminated Dillon because he exhibited "insubordinate" and "particularly vexing" behavior during his tenure with the Asylum Office, rather than because of his opposition to the Asylum Office's allegedly discriminatory practices. Dillon is unable to point to an employee who was retained by the Asylum Office despite exhibiting similar behavior, nor has he proffered any other evidence that his termination was pretextual. Accordingly, we are satisfied that no triable issue exists as to whether the Secretary's explanation is pretextual.

While Dillon also argues the Asylum Office violated Title VII when it refused to provide him with a performance appraisal, here again he bears the burden of showing that a triable issue exists as to the veracity of the Asylum

Office's proffered explanation. *Id.* The Asylum Office avers that it withheld the appraisal solely because, once Dillon was no longer employed, he was not entitled to an appraisal under its internal regulations. Dillon has provided no evidence suggesting that the decision not to provide an appraisal was motivated by retaliatory animus, nor has he presented evidence of a former employee who was provided with a performance appraisal after having left the Asylum Office. Under these circumstances, we are satisfied that Dillon has presented insufficient evidence to rebut the Asylum Office's explanation.

AFFIRMED.